In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.3712 of 2005.

Date of decision:27.4.2007

Nanha.

...Petitioner.

Versus

Risala and another.

...Respondents.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.Rajmohan Singh Advocate for the petitioner.

Mr.V.K.Jain, Senior Advocate with Mr.Gurmail Singh, Advocate for the respondents.

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Judgment.

S. N. Aggarwal, J.

Nanha petitioner was the owner of land measuring 7 Kanals 1 Marla for which he had executed an agreement of sale dated 27.12.1991 in favour of Risala, respondent No.1. The sale consideration was Rs.1.5 lacs. The petitioner did not execute the sale deed in compliance with the agreement of sale dated 27.12.1991 on which Risala, respondent filed a civil suit for specific performance of agreement of sale dated 27.12.1991. The suit was decreed by the Court of Civil Judge (Senior Division), Kaithal, vide judgment and decree dated 15.1.1999.

The following was the operative part of the judgment dated 15.12.1999:-

> "It is ordered that the suit of the plaintiff succeeds and accordingly a decree for possession qua the suit land by way of specific performance of the aforesaid agreement, is hereby passed in favour of the plaintiff and against the defendants with costs. The defendants are hereby granted one month time from the date of this judgment to get the sale-deed executed in favour of the plaintiff qua the suit land subject to receipt of balance sale consideration of Rs.30,000/-. However, the expenses regarding registration and stamp etc. shall be borne by the plaintiff. Since after the execution of the agreement to sell dated 27.12.1991, by dint of judgment and decree dated 28.2.1992 handed down in civil suit No.279 of 1992, titled Smt. Krishani Vs.Nanha, defendant No.2, Smt. Krishani wife of defendant No.1, Nanha has become owner of the suit land, so she is also directed to join defendant No.1 in due execution and registration of the sale deed."

An appeal was filed by the petitioner but it was dismissed on 2.5.1993.

Respondent No.1 moved an application 29.5.2003 for permission to deposit the balance sale consideration. That application was allowed by the Court on 15.11.2003. The respondents had deposited the balance sale consideration on 17.11.2003.

The petitioner had also filed an application under Section 28 of

the Specific Relief Act with the prayer that agreement dated 27.11.12991 be rescinded because of non payment of balance sale consideration within the stipulated period. That application was dismissed by the learned trial Court vide impugned order dated 4.6.2005 and the balance sale consideration deposited by the decree holder on 19.11.2003 was approved.

Hence, the present petition.

The submission of learned counsel for the petitioner was that Risala,respondent No.1-decree holder was required to deposit the balance sale consideration within a period of one month from the passing of judgment and decree dated 15.1.1999 but he failed to deposit the amount in the stipulated period. Therefore, he had failed to comply with the judgment and decree dated 15.1.1999. He is not entitled to the extension of time as a right had accrued to the petitioner under Section 28 of the Specific Relief to get the agreement of sale deed dated 27.12.1991 rescinded. Hence, it was prayed that the impugned order dated 4.6.2005 be set aside. Reliance was placed on the judgments of this Court reported as **Onkar Nath Versus Basheer and others,** (1985-2) Punjab Law Reporter 432 and **Chanda Versus Ratini and another,** (1999-3) Punjab Law Reporter 123. In both these judgments, it was held that if the balance sale consideration was not deposited within the stipulated period, the petitioner becomes entitled to get the agreement of sale rescinded.

On the other hand, the submission of the learned counsel for respondent No.1decree holder was that the judgment and decree were passed on 15.1.999. The petitioner had filed the appeal on 15.2.1999. Operation of the judgment dated 15.1.1999 was stayed by the Appellate

Court on 19.2.1999. The appeal was dismissed by the learned Appellate Court on 2.5.2003. The respondent had filed an application for permission to deposit the balance sale consideration on 29.5.1993 which was allowed by the Court on 15.11.2003 subject to risk and responsibility of the decree holder. The balance sale consideration was deposited by the decree holder on 17.11.2003.

It was submitted that the amount was deposited in the stipulated period . It was further submitted that the Court has a right to extend the time even if the balance sale consideration was not deposited within stipulated period. Reliance was placed on the judgment of the Hon'ble Supreme Court reported as **Yeshoda and another Versus K.Nagarajan,** (1996) 11 Supreme Court Cases 228 and the judgments of this Court reported as **Harbans Singh Grewal versus Puran Singh (deceased) by his L.Rs.,** 1990 P.L.J. 400, **Gurbachan Singh Versus Bachan Singh and others,** (1997-1) Punjab Law Reporter 355 and **Mohinder Singh Versus Gurdial Singh and another,** 1997 A.I.H.C. 1344. In all these cases, it was held that even if balance sale consideration is not deposited in the stipulated period, time can be extended.

Submissions have been considered.

It deserves notice that in the operative part of the judgment and decree dated 15.1.1999, one month time was specified within which the judgment debtors were to execute the sale deed in favour of the decree holder on receipt of balance sale consideration of Rs.30,000/-. It was not stipulated that if the balance sale consideration was not deposited by the decree holder, then the suit should be deemed to have been dismissed. In

other words, no defaulting clause was laid down. In **Harbans Singh Grewal's** case (supra), it was held by this Court as under:-

> "Furthermore, there was no direction in the decree that on failure to deposit the balance of the sale consideration of Rs.36,000/- or a sum of Rs.10,000/- towards expenses, the suit of the plaintiff was to be dismissed. In the absence of any such directions, time granted in the decree could be extended having resort to the provisions of Section 148 of the Code of Civil Procedure. In a such like matter Division Bench of the Patna High Court in **Surai Singh v Rajnarain Lal and another**, AIR 1984 Patna 155, held that power of the Court under Section 148 of the Code of Civil Procedure would be there to extend the time granted in the decree when there was nothing in the decree that non-payment of the amount within the time allowed would result in dismissal of the suit."

The other judgments relied upon by the counsel for respondent No.1 also lay down the same view of law. In **Yeshoda's** case (supra), the Hon'ble Supreme Court was pleased to repel the argument that the Court cannot extend the time. It was observed by the Hon'ble Supreme Court as under:-

> "It is contended by Mr. Mahale, learned counsel for the petitioners, that after the expiry of the time prescribed by the court, the petitioner has a right to seek rescission of the decree for specific performance for non-compliance. The Court, therefore, has no power to enlarge the time. We find no force

in the contention. Section 148 CPC gives power to the court to enlarge the time for complying with the orders of the court from time to time. Under those circumstances, the court has correctly exercised the discretion since the amount came to be deposited within three months from the date of dismissal of the application under Section 28."

In view of the judgment of the Hon'ble Supreme Court in **Yeshoda's** case (supra), the judgments relied upon by the learned counsel for the petitioner do not need discussion.

In the present case, the judgment was passed by the trial Court on 15.1.1999. Appeal was filed by the petitioner on 15.2.1999 and the stay order was granted by the learned Lower Appellate Court on 19.2.1999. At the most, therefore, there was four days' delay in depositing the balance sale consideration and thereafter the operation of the judgment and decree dated 15.1.1999 was stayed by the Appellate Court. The appeal was dismissed by the learned Lower Appellate Court on 2.5.2003 and the petitioner had filed an application on 29.5.2003 for permission to deposit the balance sale consideration. This application was accepted by the Court on 15.11.2003 at the risk and responsibility of the decree holder and the decree holder had deposited the balance sale consideration on 17.11.2003 i.e. within two days when the order was passed by the Court. In these circumstances, therefore, no abnormal delay can be attributed to the respondent decree holder and it is a fit case where time deserves to be extended.

Since proper case has been made out for extension of time, therefore, the application filed by the petitioner under Section 28 of the

Specific Relief deserves to be dismissed.

Therefore, there is no illegality or infirmity in the order dated 4.6.2005 passed by the learned trial Court in dismissing the application.

No merit.

Dismissed.

April 27 ,2007. (S. N. Aggarwal)
Jaggi Judge